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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,553	03/17/2006	Stefan Forss	0104-0553PUS1	5081
2292	7590	01/09/2009		EXAMINER
BIRCH STEWART KOLASCH & BIRCH				DURAND, PAUL R
PO BOX 747			ART UNIT	PAPER NUMBER
FALLS CHURCH, VA 22040-0747			3721	
			NOTIFICATION DATE	DELIVERY MODE
			01/09/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/572,553	FORSS, STEFAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	PAUL R. DURAND	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 and 22-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7,9 and 12-18 is/are rejected.  
 7) Claim(s) 8,10,11 and 22-24 is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 17 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 2, 4-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gautier (US 4,361,235) in view of Shaw (US 3,382,642).

In claims 1 and 5, Gautier discloses the invention as claimed including a duct "B", collapsible container "A", the duct, being defined by two opposite side walls joined along a connecting portion 8, and comprising an inlet (Generally 4B) arranged in one of the side walls, where the duct is filled with air prior to sealing (see entire document).

What Gautier does not disclose is the clamping and filling of the duct. However, Shaw teaches that it is old and well known in the art to provide a filling machine for filling an inlet 15 on a container, with an abutment 17, gas module 23, axially movable towards the abutment (17), allowing one of the two side walls to bulge to form a free passage into the duct for filling and after completion of the gas filling, sealing the duct with sealer 36 (see entire document).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Gautier with the filling means as taught by Shaw for the purpose of filling a container compartment with a pressurized fluid.

In claim 2, the modified invention of Gautier, through Shaw teaches that it would have been obvious to one having ordinary skill in the art at the time the invention was

made to provide a clamping means comprised of filling nozzle and member 20 for the purpose of holding a container in place during filling (see figures 1-6).

In claims 4 and 9, the modified invention of Gautier, through Shaw teaches that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a heat and pressure sealer 36 for the purpose of sealing a container.

In claim 6 and 7, the modified invention of Gautier, through Shaw teaches that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide fill nozzle 28 and packing means 36 (see figures 1-6).

3. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gautier and Shaw in view of Powell et al. (US 7,024,836).

The modified invention of Gautier discloses the invention as claimed as applied to claims 1 and 5 above except for an abutment utilizing a recess. However, Powell teaches that it is old and well known in the art to provide a filling machine with an abutment 24, comprised of a recess 25, which allows a package 10 to expand while being filled (see figures 1, 6 and 8).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Gautier with the abutment means as taught by Powell for the purpose of facilitating filling of a package compartment.

4. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gautier and Shaw in view of Pederson (US 3,692,613).

The modified invention of Gautier discloses the invention as claimed including sealing means 36 utilizing an abutment 17. What the modified invention of Gautier does not disclose is the use of an abutment having a low thermal conductivity and cooling means. However, Pederson teaches that it is old and well known in the art to provide sealing abutment means comprised of cooling means 17 and an abutment surface 15, manufactured from rubber and having low thermal conductivity comprised of polytetrafluoroethylene (PTFE) (see figures 1, 2 and col. 2, line 61 – col. 3, line 33)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Gautier with the conductivity and cooling means as taught by Pederson for the purpose of sealing a package, while preventing excessive melting of the package material.

#### ***Response to Arguments***

5. Applicant's arguments, with respect to the drawings have been fully considered and are persuasive. The objection has been withdrawn.
6. Applicant's amendments to the claims overcomes the rejection set forth under 35 U.S.C. § 112. The rejection has been withdrawn.
7. Applicant's arguments filed in regard to the rejection set forth under 35 U.S.C. § 103 have been fully considered but they are not persuasive.

Applicant first argues that the primary reference of Gautier and the teaching of Shaw do not disclose an inlet located on one of the sidewalls, but instead shows an inlet located on each of the side walls. This argument is not persuasive.

Gautier does disclose an inlet located at the top of the container, where the opening is bounded by the front and back walls of the filled package. The opening is subjected to a pressurized gas through the use of nozzles. However, the teaching of Shaw discloses the use of an opening, which is located on a face of the container and which is engaged by an axially moving nozzle, so that the opening is located between the nozzle and an abutment. In a reasonable interpretation of the claims, the abutment can be comprised of member 21, or in the alternative, member 17.

Applicant further argues that there is no suggestion to combine the teaching of Shaw with the primary reference of Gautier since Shaw teaches the filling of a container with a liquid rather than a gas. This argument is not persuasive

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, and in respect to the process claims, both are the references are generally concerned with filling and sealing of flexible containers. Moreover, the primary reference of Gautier was chosen to show the gas filling of a gas module handle portion of a container. The teaching of Shaw was provided to show applicant that it is well known to utilize an axially moving fill nozzle to engage an opening on a container prior to being filled. Moreover, one cannot show nonobviousness by attacking

references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Insofar as the apparatus is concerned and in addition to the arguments set forth above, limitations relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim as an apparatus claim must be distinguished in terms of structure rather than function. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). See generally MPEP §§ 2114-5.

Therefore, the rejection is proper

8. In claims 17 and 18, at the applicant's request, the examiner has supplied the teaching of Pederson, which teaches the use a cooling and low thermal conductivity abutment surfaces. Accordingly and in accordance with the MPEP, this Office Action will be made final. See generally MPEP § 2144.03.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. DURAND whose telephone number is (571)272-4459. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL R. DURAND/  
Primary Examiner, Art Unit 3721  
January 7, 2009